

1 PETE ROOKE,

2 No. C 12-5040 WHA (PR)

3 Petitioner,

4 v.

5 MARK MARTELL,

6 **ORDER OF DISMISSAL;
GRANTING LEAVE TO PROCEED
IN FORMA PAUPERIS; DENYING
MOTION FOR WRIT OF ERROR
CORAM NOBIS**

7 Respondent.

8 (Docket Nos. 2, 3)

9 **INTRODUCTION**

10 Petitioner, a California prisoner proceeding pro se, filed a petition for a writ of habeas
11 corpus pursuant to 28 U.S.C. 2254. The petition challenges a decision by the United States
12 Department of Immigration and Customs Enforcement ("I.C.E.") that he is not a citizen and that
13 he will be deported back to the United Kingdom when his state prison term is complete. He has
14 applied for leave to proceed in forma pauperis and filed a motion for a writ of error coram
15 nobis.

16 **ANALYSIS**

17 **A. STANDARD OF REVIEW**

18 This court may entertain a petition for writ of habeas corpus "in behalf of a person in
19 custody pursuant to the judgment of a State court only on the ground that he is in custody in
20 violation of the Constitution or laws or treaties of the United States." 28 U.S.C. 2254(a); *Rose*
21 *v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading

1 requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ
2 of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state
3 court must “specify all the grounds for relief which are available to the petitioner ... and shall
4 set forth in summary form the facts supporting each of the grounds thus specified.” Rule 2(c) of
5 the Rules Governing Section 2254 Cases, 28 U.S.C. foll. 2254. “[N]otice’ pleading is not
6 sufficient, for the petition is expected to state facts that point to a ‘real possibility of
7 constitutional error.’” Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d
8 688, 689 (1st Cir. 1970)).

9 **B. LEGAL CLAIMS**

10 The petition challenges a decision by ICE officials to deport him to the United Kingdom
11 after he completes his state sentence. The petition itself does not explain the grounds upon
12 which petitioner challenges his deportation order, but rather refers to “attachments.”
13 Concurrently with the petition, petitioner filed a motion to vacate judgment or for a writ of error
14 coram nobis. In his motion, petitioner asserts that the deportation order is based upon the
15 determination by I.C.E. that petitioner is not a U.S. citizen and he has committed a felony.
16 Petitioner does not dispute that he has committed a felony, but he contends that he is in fact a
17 naturalized citizen of the United States. Therefore, he argues, he should not be deported.

18 As petitioner is not challenging the state court conviction for which he is in custody,
19 neither a writ of habeas corpus under 28 U.S.C. 2254 nor a writ of error coram nobis are
20 available to him. *See* 28 U.S.C. 2254 (providing for a writ of habeas corpus to inmates in state
21 custody under a judgment from state court that violates federal law); *Telink, Inc. v. United*
22 *States*, 24 F.3d 42, 45 (9th Cir. 1994) (writ of error coram nobis affords a remedy to attack a
23 criminal conviction after petitioner has served his sentence and is no longer in custody).

24 A writ of habeas corpus under 28 U.S.C. 2241 is available to challenge certain actions
25 by federal immigrations officials, such as a person’s detention by I.C.E. while he or she awaits
26 deportation. *See Nadarajah v. Gonzales*, 443 F.3d 1069, 1075 (9th Cir. 2006). However, the
27 REAL ID Act of 2005, makes the United States Court of Appeals the "sole" judicial body able
28 to review challenges to final orders of deportation, exclusion, or removal. *Alvarez-Barajas v.*

1 *Gonzales*, 418 F.3d 1050, 1052 (9th Cir. 2005) (citing REAL ID Act, Pub.L. No. 109-13, 119
2 Stat. 231, § 106(a)). Petitioner must challenge to the deportation order in the United States
3 Court of Appeals for the Ninth Circuit, not here.

CONCLUSION

5 In light of the foregoing, the petition for a writ of habeas corpus is **DISMISSED** without
6 prejudice to petitioner challenging his deportation order in the United States Court of Appeals
7 for the Ninth Circuit. Reasonable jurists would not find this court's dismissal of his petition
8 debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Consequently, no certificate
9 of appealability is warranted in this case.

10 His application to proceed in forma pauperis (dkt. 2) is **GRANTED**. His motion for a writ
11 of error coram nobis (dkt. 3) is **DENIED**.

12 The clerk shall enter judgment and close the file.

13 || IT IS SO ORDERED.

Dated: October 25, 2012.

Wm. Alsop
WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

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